

Unofficial Translation

This translation is for the convenience of those unfamiliar with the Thai language.

Please refer to the Thai text for the official version

Financial Institution Business Act

B.E. 2551

BHUMIBOL ADULYADEJ, REX.,

Given on the 27th day of January B.E. 2551; Being the 63rd year of the Present Reign

By Royal command of His Majesty King Bhumibol Adulyadej, it is hereby proclaimed that:

Whereas it is deemed expedient to revise and combine the law relating to commercial banking and the law relating to the undertaking of finance business, securities business and credit foncier business;

This Act contains certain provisions in relation to the restriction of rights and liberties of persons in respect of which Section 29, in conjunction with Section 31, Section 33, Section 36, Section 39, Section 41 and Section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the National Legislative Assembly, as follows:

2551".

Section 1 This Act shall be called the "Financial Institution Business Act B.E.

Section 21 This Act shall enter into force after one hundred and eighty days

from the date of its publication in the Government Gazette.

1 Government Gazette, Volume 125, Part 27 Kor, Page 1, dated 5 February B.E. 2551.

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Section 3 The following laws shall be repealed: (1) the Commercial Banking Act B.E. 2505;

(2) the Commercial Banking Act (No. 2) B.E. 2522;

(3) the Emergency Decree amending the Commercial Banking Act B.E. 2505, B.E. 2528;

(4) the Commercial Banking Act (No. 3) B.E. 2535;

(5) the Emergency Decree amending the Commercial Banking Act B.E. 2505 (No.

2) B.E. 2540;

(6) the Emergency Decree amending the Commercial Banking Act B.E. 2505 (No.

3) B.E. 2540;

(7) the Emergency Decree amending the Commercial Banking Act B.E. 2505 (No.

4) B.E. 2541;

(8) the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522;

(9) the Emergency Decree amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522, B.E. 2526

(10) the Emergency Decree amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 2) B.E. 2528; (11) the Act on the Undertaking of Finance Business, Securities Business and

Credit Foncier Business (No. 2) B.E. 2535;

(12) the Act on the Undertaking of Finance Business, Securities Business and

Credit Foncier Business (No. 3) B.E. 2535;

(13) the Emergency Decree amending the Act on the Undertaking of Finance

Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 4) B.E. 2540; (14) the Emergency Decree amending the Act on the Undertaking of Finance

Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 5) B.E. 2541.

Section 4 In this Act,

"financial institution business" means the commercial banking business, finance business and credit foncier business and shall include the undertaking of specialized financial institution business.

"commercial banking business" means the business of accepting deposits of money or accepting money from the public subject to withdrawal on demand or at the end of a specified period and of employing such money in one or several ways such as granting of credits, buying and selling of bills of exchange or any other negotiable instrument, buying and selling of foreign exchange.

"finance business" means the business of accepting deposits of money or accepting money from the public subject to withdrawal on demand or at the end of a specified period, which is not the accepting of deposits or money within the account subject to withdrawal by cheque, and of employing such money in one or several ways such as granting of credits, buying and selling of bills of exchange or any other negotiable instrument.

"credit foncier business" means the business of accepting deposits of money or accepting money from the public subject to withdrawal at the end of a specified period and of employing such money in any matter as follows:

- (1) lending money on the security of mortgage of immovable property;
- (2) buying immovable property under contract of sale with right of redemption

"financial business" means commercial banking business, finance business, credit foncier business, securities business, derivative business under the law on derivatives, life insurance business under the law on life insurance or other businesses as prescribed in the notification of the Bank of Thailand.

"granting of credits" means lending money or purchasing, discounting, rediscounting bills, becoming a creditor upon having paid or ordered that an amount of money be paid on behalf of a customer, or becoming a creditor upon having paid in accordance with an obligation specified in a letter of credit or other obligations.

"credit-like transaction" means factoring transaction, hire purchase transaction, leasing transaction and other transactions similar to granting of credits as prescribed in the notification of the Bank of Thailand.

"securities" means securities in accordance with the laws related to securities and exchange.

"financial institution" means:

- (1) a commercial bank; (2) a finance company;
- (3) a credit foncier company.

"commercial bank" means a public limited company licensed to undertake commercial banking business and shall include a retail bank, a foreign commercial bank's subsidiary and a foreign commercial bank's branch licensed to undertake commercial banking business.

"retail bank" means a public limited company, licensed to undertake commercial banking business with the main objective of providing services to retail customers as well as small and medium-sized enterprises and restricted to undertake business related to foreign currencies, derivatives and other high risk transactions as prescribed in the notification of the Bank of Thailand.

"foreign commercial bank's subsidiary" means a public limited company licensed to undertake commercial banking business whose shares are, directly or indirectly, held by a foreign commercial bank in the amount not less than ninety-five percent of its total number of shares sold.

"foreign commercial bank's branch" means a branch of a foreign commercial bank licensed to undertake commercial banking business in Thailand;

"finance company" means a public limited company, licensed to undertake finance business.

"credit foncier company" means a public limited company, licensed to undertake credit foncier business.

"capital funds" means money with the following characteristics:

- (1) the paid-up capital, including premiums of shares received by a financial institution and money received by such financial institution as a result of issuance of certificates representing the rights to buy shares of such financial institution;
- (2) statutory reserve;
- (3) reserves appropriated from net profits at the end of each accounting period in accordance with the resolution of the shareholders meeting or the regulations of such financial institution, excluding reserves for the diminution of the values of assets and reserves for repayment of debts;
- (4) net profit after appropriation;
- (5) reserves arising from assets revaluation, other reserves; or
- (6) money which a financial institution receives from issuing a debt instrument or an instrument or any other money as prescribed in the notification of the Bank of Thailand

"company" means a limited company, a public limited company, a limited

partnership, a registered ordinary partnership, or other juristic persons.

"parent company" means a company having power to control over another company either directly or indirectly, with the following characteristics:

- (1) possessing shares of a company in an amount exceeding fifty percent of the total number of shares sold;
- (2) having power to control the majority voting rights in shareholders meeting of a company;
- (3) having power to control the appointment or removal of a person with power of management or at least half of the directors of a company; or
- (4) having power to control business in any other manners in accordance with the rule as prescribed in the notification of the Bank of Thailand;

Possessing of shares of a company, either directly or indirectly, in an amount not less than twenty percent of the total number of shares sold shall be presumed to have power to control over such company unless proven otherwise.

"subsidiary" means:

- (1) a company having another company as its parent company; or
- (2) a subsidiary of the company under (1) in any step along the line.

"affiliate" means a subsidiary having the same parent company. "person with power of management" means:

- (1) a manager, a deputy manager, an assistant manager or an executive director of a financial institution or a company, as the case may be, or any person holding an equivalent position which is called otherwise;

(2) a person, according to an agreement with a financial institution or a company, having partial or full power of management; or
(3) a person having de facto power to control or dominate a manager or a director, or the management of a financial institution or a company to comply with his order in formulating policy or conducting business of the financial institution or the company.

"executive director" means a director who has a duty on the management of a financial institution or a company in accordance with the rule as prescribed in the notification of the Bank of Thailand.

"related person" means a person having relationship with another person in any

of the following characteristics: (1) being a spouse;

(2) being a minor child or an adopted minor child;

(3) being a company which the person or a person under (1) or (2) has the power of management;

(4) being a company which the person or a person under (1) or (2) has power

to control the majority voting rights in shareholder meeting;

(5) being a company which the person or a person under (1) or (2) has power to control the appointment or removal of a director;

(6) being a subsidiary of the company under (3), or (4) or (5); (7) being an affiliate of the company under (3), or (4) or (5);

(8) being a principal, an agent; or

(9) being other persons with characteristics as prescribed in the notification of the Bank of Thailand.

In the case where any person, either directly or indirectly, holds shares of a

company in an amount not less than twenty percent of the total number of shares sold, it shall be presumed that the company is a related person of such person, unless otherwise it could be proven not to be a related person.

"major shareholder" means a person holding or possessing shares of a financial institution in an amount exceeding five percent of the total number of shares sold, provided that shares held by related person shall be included.

"Minister" means the Minister in charge of the enforcement of this Act.

Section 5 Where any business, undertaking in the manner of public fund raising through deposit acceptance or any other means, granting of credits or undertaking financial business, affects the overall economy of the country and there is no specific law governing such business, the Bank of Thailand may propose for an enactment of a Royal Decree prescribing such business to be subject to the enforcement of this Act, either in whole or in part, including related penalty provisions. In this regard, supervisory regulations of such business may also be prescribed.

Section 6 The public fund raising through selling or distributing of securities under the laws on securities and exchange shall not be subject to the enforcement of this Act.

Section 7 Notification of the Bank of Thailand issued under this Act shall come into force upon publication in the Government Gazette.

Section 8 The Minister of Finance shall be in charge of the enforcement of this Act and shall have the power to issue notifications to implement this Act.

Notifications under the first paragraph shall come into force upon publication in the Government Gazette.

The Minister may require the Bank of Thailand to submit any report of information obtained from the operations, as prescribed by the Minister. Such report may be submitted periodically or occasionally and may include explanation or clarification.

Chapter 1

Formation and License Application

Section 9 The commercial banking business, finance business or credit foncier business may be undertaken only by a juristic person in the form of a public limited company, licensed by the Minister with the recommendation of the Bank of Thailand. Such license may be granted with rules as the Minister deems appropriate.

An application for the formation of a public limited company under the laws on public limited company to undertake the business under the first paragraph shall be subject to prior approval of the Minister.

After registered as a public limited company, such public limited company shall submit a license application in the form as prescribed in the notification of the Bank of Thailand to the Minister through the Bank of Thailand.

The application and issuance of a license shall be in accordance with the rule and subject to the payment of fees as prescribed by the Minister with the recommendation of the Bank of Thailand.

Section 10 A foreign commercial bank may establish a branch to undertake commercial banking business in Thailand under this Act upon being licensed by the Minister with the recommendation of the Bank of Thailand. Such license may be granted with rules as the Minister deems appropriate.

In applying for a license under the first paragraph, the foreign commercial bank shall present a written consent from the supervisory and examination authority of such foreign commercial bank to the Minister through the Bank of Thailand.

The application and issuance of the license under the first paragraph shall be in accordance with the rule and subject to the payment of fees as prescribed by the Minister with the recommendation of the Bank of Thailand.

Section 11 A financial institution shall use a name, as specified in the license, which includes the words "bank", "finance company" or "credit foncier company" at the beginning of the name as the case may be.

Section 12 No person other than financial institution shall use a name or a name description in financial business of "bank", "financing", "financial", "investment",

“credit”, “trust”, “finance”, “credit foncier company” or any other words of the same meaning.

The provision under the first paragraph shall not apply to any person permitted by the Bank of Thailand or permitted under other laws.

Section 13 The establishment or change of the location of the head office or branch office, or closure of a branch of a financial institution shall be approved by the Bank of Thailand in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 14 The establishment of a financial institution’s representative office outside the Kingdom and the establishment of a representative office of a foreign financial institution in the Kingdom may be made only when permitted by the Bank of Thailand, provided that the Bank of Thailand may prescribe any rule to be complied with.
The representative office under the first paragraph shall not, either directly or indirectly, accept deposits or money from the public subject to withdrawal on demand or at the end of a specified period.

Chapter 2

Structure of Financial Institution

Division 1

Shares and Shareholders

Section 15 The ordinary shares and preference shares of a financial institution shall be of the kind with name certificates having a par value of not more than one hundred Baht per share and are subject to no regulation of the financial institution restricting transfer of shares, except that such restriction is for the purpose of compliance with this Act.

Financial institutions may issue preference shares with no voting right or other preference shares only when being permitted by the Bank of Thailand, provided that the Bank of Thailand may prescribe any rule to be complied with.

Section 16 The amount of shares of a financial institution held by persons of Thai nationality shall not be less than seventy-five percent of the total amount of voting shares sold and the number of its directors who are persons of Thai nationality shall not be less than three quarters of the total number of directors.

In the case where the Bank of Thailand deems appropriate, the Bank of Thailand may grant permission that persons of non-Thai nationality hold shares up to forty-nine percent of the total amount of voting shares sold and may permit a proportion of non-Thai nationality directors of more than one-quarter but shall not reach one half of the total number of directors.

In the case where it is necessary to rectify the operation or to strengthen the stability of any financial institution or for the purpose of the financial institutions system stability, the Minister with the recommendation of the Bank of Thailand shall have the power to relax the requirement of the shareholding and directorship other than those prescribed in the second paragraph. Such relaxation may be granted with rule and time clause.

Section 17 Any person holding or possessing shares of any financial institution, either directly or indirectly, in an amount of no less than five percent of the total number of shares sold shall report the holding or possession of such shares to the Bank of Thailand in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The amount of shares in the first paragraph shall include those held or possessed by related person of the person under the first paragraph. The shares under the first paragraph shall not include preference shares with no voting rights.

In the case where the person under the first paragraph does not report in accordance with the rule as prescribed in the notification of the Bank of Thailand, the provision under Section 19 shall apply to such unreported share *mutatis mutandis*.

Section 18 No person shall hold or possess shares of any financial institution, either directly or indirectly, in an amount exceeding ten percent of the total number of shares sold unless permitted by the Bank of Thailand or being in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The amount of shares in the first paragraph shall include those held or possessed by related person of the person under the first paragraph. The shares under the first paragraph shall not include preference shares with no voting rights.

Section 19 Any person acquiring shares of any financial institution which causes the number of shares held or possessed to violate the provision of Section 18 shall dispose the exceeding amount of shares to any other persons within ninety days from the date of the receipt of such shares unless being waived by the Bank of Thailand. Such waiver shall not exceed ninety days.

In the case where the person under the first paragraph fails to dispose the exceeding amount of shares within the period as prescribed in the first paragraph, the Bank of Thailand may file a motion to the court to order the disposal of the said excess shares. Where the court deems that the holding or possessing of such shares violates the provision of Section 18, the court shall have the power to order the sale by auction or otherwise.

Section 20 No financial institution shall dispose its shares to any person which causes the number of shares held or possessed by such person to violate the provision of Section 18.

The number of shares under the first paragraph shall include those held or possessed by related person of the person under the first paragraph. Whenever an invitation to subscribe for a share of any financial institution is made, such financial institution shall specify the rule as prescribed under Section 17, Section 18 and Section 19 in the prospectus.

Section 21 Any person holding or possessing shares of a financial institution in violation of Section 18 may not use such holding of shares in excess against the financial institution, and such financial institution may not pay dividend or any other form of benefits to such person, or allow such person to vote at a shareholder meeting on account of the portion of shares in excess.

In the case where the person under the first paragraph acquires shares in good faith from inheritance and the financial institution announces a dividend payment within the ninety day period from the date of the acquisition of such shares or within the period extended by the Bank of Thailand under the first paragraph of Section 19, such person shall have the right to receive the dividend on account of the portion of shares in excess of ten percent as prescribed in Section 18. However, such person shall not be able to vote in the shareholder meeting for the portion of shares in excess.

Section 22 For the purpose of compliance with Section 16, Section 17, Section 18 and Section 19, a financial institution shall examine its register of shareholders prior to each shareholder meeting, or prior to each distribution of dividends or any other form of benefits to shareholders and inform the Bank of Thailand of the results of such examination in accordance with the rule as prescribed in the notification of the Bank of Thailand.

In the case where any shareholder violates the provision of Section 18, the financial institution shall notify such person in writing to dispose the shares in excess within the period as prescribed under Section 19, and inform the Bank of Thailand of such matter.

Section 23 The provisions of Section 15 to Section 22 shall not apply to a foreign commercial bank's branch established in the Kingdom and a foreign commercial bank's subsidiary.

Division 2

Directors, Managers or Persons with Power of Management

Section 24 No financial institution shall appoint or allow any person with any of the following characteristics to be or to perform the duty of a director, a manager, a person with power of management or an advisor of the financial institution:

- (1) being a bankrupt or having been discharged from bankruptcy for less than five years.
- (2) having been imprisoned by a final court judgment for an offense related to property committed with dishonest intent regardless of whether the sentence has been suspended or not.
- (3) having been dismissed or discharged from a government agency, a government organization or a state agency on a charge of dishonest act in office.
- (4) having been a person with power of management in a financial institution during its license withdrawal unless an exception has been granted by the Bank of Thailand.
- (5) having been removed from position as a director, a manager or a person with power of management of a financial institution under Section 89 (3) or Section 90 (4) or under the laws on securities and exchange unless an exception has been granted by the Bank of Thailand.
- (6) concurrently being a director, a manager, an officer, or a person with power of management of other financial institutions unless an exception has been granted by the Bank of Thailand.
- (7) being a manager or a person with power of management besides the position of a director of a company being granted credits by or being guaranteed by or being given an aval by, or having contingent liabilities at the financial institution unless:
 - (a) being a director or an advisor of the financial institution which is not an executive director;
 - (b) being exempted in accordance with the rule as prescribed in notification of the Bank of Thailand.
- (8) being a political official, a member of parliament, a senator, a member of district assembly, a district administrator or a person holding any other political position as prescribed in the notification of the Bank of Thailand.
- (9) being an officer of the Bank of Thailand or a former officer of the Bank of Thailand in accordance with the rule as prescribed in the notification of the Bank of Thailand, except in the case where such person is appointed by the Bank of Thailand for the purpose of rectifying the financial condition or operation of the financial institution, or holding a position in a state enterprise financial institution in accordance with the laws on budget procedures. Provided that the officer or former officer shall not be entitled to receive any rights to purchase shares in such financial institution.
- (10) being a person having any prohibited characteristics or having other disqualifications as prescribed in the notification of the Bank of Thailand.

Section 25 The appointment of a director, a manager, a person with power of management or an advisor of a financial institution shall be prior approved by the Bank of Thailand regardless of a new person appointment or reappointment for the person to retain the position.

In considering the approval under the first paragraph, the Bank of Thailand shall complete its consideration within fifteen business days from the date that the Bank of Thailand receives the application and all relevant documents as prescribed by the Bank of Thailand. If the result of consideration is not notified within the said period, it shall be deemed that the Bank of Thailand has granted an approval for such appointment. In the case where it subsequently appears that the approved person under the first paragraph possesses any prohibited characteristics under Section 24, the Bank of Thailand shall withdraw such approval.

Section 26 In a shareholder annual meeting, a financial institution shall have the duty to notify or disclose to the shareholders of any form of benefits and any remuneration of a director, a manager and any person with power of management received from the financial institution and shall notify the shareholder meeting of the directorship of such person in other businesses in accordance with the rule as prescribed in the notification of the Bank of Thailand.

For the purpose of compliance with the first paragraph, a director shall have the duty to notify the financial institution of his directorship in other businesses.

Section 27 In undertaking the business of a financial institution, directors shall perform their duties in a similar manner to a careful business man and shall be jointly responsible in the management of the financial institution, including:

- (1) conducting the financial institution to comply with this Act;
- (2) preparing and keeping of accounts and other relevant documents to show the actual financial condition and the result of business operation of the financial institution, which shall be disclosed to the shareholders, depositors and the public for recognition and inspection in accordance with the rule as prescribed in the notification of the Bank of Thailand;
- (3) directing the financial institution to summon a shareholder meeting within four months from the end of the six-month accounting period in the case where it appears that such financial institution has incurred losses causing the shareholders' equity at the end of the six-month accounting period under Section 67 to be lower than fifty percent of paid-up capital, and directing the financial institution to summon another shareholder meeting, in the case where the shareholders' equity falls below twenty-five

percent of the paid-up capital, in order to inform the shareholders of the actual financial condition and the result of business operation of the financial institution.

Section 28 Directors shall be jointly liable to the shareholders or depositors or holders of promissory notes issued by the financial institution for the purpose of procuring funds from the public for any damage caused by failure to perform their duties as ordered by the Bank of Thailand or the financial institution examiner in accordance with this Act, unless it could be proven that they did not commit dishonesty or involve in such failure to perform their duties.

Chapter 3

Supervision of Financial Institutions

Division 1

Maintenance of Capital Funds and Assets

Section 29 A financial institution shall maintain its capital fund in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The Bank of Thailand shall have the power to prescribe type and category of the capital funds as well as rule for the calculation of the capital funds of a financial institution.

Section 30 A financial institution shall maintain its capital fund in proportion

to its assets, liabilities, contingent liabilities or variables and any other risks in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The stipulation under the first paragraph may be issued for financial institutions in general to maintain their capital funds in proportion to their assets, liabilities, contingent liabilities or variables and any other risks in accordance with the size or type of assets, liabilities, contingent liabilities or variables and any other risk in aggregate of all types or for each type. In the case where it becomes apparent that any financial institution has high risk exposure, the Bank of Thailand may order such financial institution to undertake any relevant action as deemed appropriate.

Section 31 A financial institution shall disclose the information related to the capital fund maintenance and information related to the risk exposure of the financial institution or its financial business group in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 32 A foreign commercial banks' branch licensed to undertake the business as prescribed in this Act shall maintain assets in Thailand or hold securities in foreign countries in accordance with the rule as prescribed in the notification of the Bank of Thailand. The said assets and securities shall be considered as a capital fund under this Act.

Assets or securities under the first paragraph shall consist of:

(1) the money brought in from the head office or any other branches outside Thailand of such foreign financial institution;

(2) various reserves, excluding reserves for diminution of the values of assets and reserves for repayment of debts; or

(3) net profits of the branch in respect of each accounting period after deduction of all accumulated losses incurred in the previous accounting periods and including profits which have been transferred to the account of the head office but have not been remitted outside the Kingdom.

Division 2

Investment of Financial Institutions

Section 33 Subject to Section 34 and Section 35, a financial institution may invest in securities for its ownership in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 34 No financial institution shall hold or possess, either directly or indirectly, shares of any companies in excess of the following ratios in accordance with the rule as prescribed in the notification of the Bank of Thailand:

- (1) twenty percent of the total capital funds of such financial institution for holding or possessing of shares of all companies;
- (2) five percent of the total capital funds of such financial institution for holding or possessing of shares of each company; or
- (3) ten percent of the total shares sold of such company.

In the case where it is necessary, the Bank of Thailand shall have power to prescribe the maximum ratio of holding or possessing shares to be lower than the prescribed percentages under the first paragraph. Such stipulation shall be notified at least fifteen days in advance of the effective date.

In the case where it is necessary for a financial institution to hold or possess shares of any company as a result of debt restructuring, debt repayment, enforcement of debt, receipt of security for granting of credits or for the undertaking business of their supporting business, the Bank of Thailand shall have the power to grant permission to hold or possess shares exceeding the ratios stipulated under the first paragraph. Such permission may be granted with rules.

Shares held by any related person of a financial institution shall be included as shares held or possessed by such financial institution in accordance with this Act. The provision of this Section shall not apply to the third paragraph of Section 58.

Section 35 No financial institution shall hold or possess the following securities:

- (1) shares or securities related to shares of other financial institutions undertaking the same type of business except those acquired as a result of a debt settlement or a guarantee in respect of credit granted which shall be disposed within six months from the date of acquisition, or those purchased or acquired with the permission of the Bank of Thailand. Such permission may be granted with rules;
- (2) securities related to shares of such financial institution in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Division 3

Business Undertaking

Section 36 A commercial bank, a finance company and a credit foncier company shall undertake the business specified to commercial banking business, finance business or credit foncier business, as the case may be, and business connected to or necessary to undertake the business of commercial bank, finance business or credit foncier business under the rule as prescribed in the notification of the Bank of Thailand. In this regard, the Bank of Thailand may issue notification prescribing connected or necessary businesses segregated by the types of financial institutions and categories of commercial banks, and may prescribe rule for undertaking such connected or necessary business.

Section 37 A financial institutions shall open for business at its office, at least, on the date and time as prescribed in the notification of the Bank of Thailand except as permitted otherwise by the Bank of Thailand. Such permission may be granted with any rule to be complied with.

A financial institution shall have traditional holidays in each year as prescribed in the notification of the Bank of Thailand.
A financial institution shall announce date and time opening and closing for business in a public area at the office of such financial institution.

Section 38 A financial institution shall announce information concerning interest rates, discount rates and any service charges whether known under different names, as well as any other information related to such financial institution in a public area at the office of the financial institution in order to make the public and customers contacting or using services in such office aware of such information. Such financial institution shall report with a copy of the notices or such information to the Bank of Thailand in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The financial institution shall announce information under the first paragraph in any media in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 39 For the purpose of consumer protection, the Bank of Thailand shall have power to prescribe the following matters in the notification for one or several types of financial institutions to comply with:

- (1) accepting deposits of money, accepting money from the public, borrowing money, making investments, granting of credits, incurring contingent liabilities, and undertaking other businesses that such financial institutions may carry on;
- (2) executing juristic acts or contracts with the public, consumers or retail customers in the course of the undertaking of business of financial institutions, which have amount or values as prescribed by the Bank of Thailand whether in content, calculation methods or contract forms;
- (3) executing guarantee contracts which shall specify the principal amount limits or shall not have unlimited guarantee by the guarantor. In the case of guarantee of debt which having a specified due date and financial institutions have agreed to extend such due date to the primary debtor but is unable to settle within six months, the financial institutions shall notify the guarantor for acknowledgement;
- (4) requirements where juristic acts or contracts grant the sole right to financial institutions to amend the contract;
- (5) Disclosure of information related to financial institutions.

Section 40 A Financial institution shall notify and demonstrate methods as well as details of the calculation of annual rate of service charges to the public and customers applying for credits.

Annual rate of service charges under the first paragraph consists of all expenses the financial institution charges per annum from the public and customer in granting of credits including interests, discounts and service charges.
The Bank of Thailand shall have power to prescribe in the notification the methods to calculate annual rate of service charges to be complied with by financial institutions.

Section 41 In the undertaking of business related to accepting deposits of money, accepting money from the public, granting of credits, borrowing of money, investing, incurring contingent liabilities or buying and selling of bills of exchange or any other negotiable instrument, or buying and selling of foreign exchange, a financial institution shall comply with the rule as prescribed in the notification of the Bank of Thailand.

The stipulation under the first paragraph may be in accordance with the type of deposits or borrowings, type of persons, type of deposit or borrowing documents, or type of instruments.

Where it is necessary for the stability of a financial institution and for the examination of the financial institution examiner, the Bank of Thailand shall have power to prescribe for the financial institution to comply with the following matters:

- (1) executing juristic acts related to the undertaking of financial institution businesses;
- (2) examining and internal control of the financial institution;
- (3) Management and administration of the financial institution.

Section 42 For the purpose of rectification of economic conditions, the Bank of Thailand shall have power to prescribe in the notification on the following matters:

- (1) stipulating of the limits of credits, transactions similar to credits, acceptance or giving an aval to bills granted by financial institutions for one or several types of business. Such stipulation may be made in proportion to total amount of lending, transactions similar to credits granting, acceptance or giving an aval to bills granted by financial institutions or in proportion to the capital fund of the financial institutions or in proportion to total amount of money accepting or borrowing from the public by the financial institutions at any particular time;
- (2) prohibiting financial institutions to increase the amount of credits or transactions similar to credits granting to any type of business, or to grant credits or transactions similar to credits to any type of business higher than prescribed ratio. The stipulation may be made in proportion to the total amount of credits or transactions similar to credits granted by the financial institution to each business at any particular time.

Section 43 A financial institution shall obtain prior approval from the Bank of Thailand for the following activities:

- (1) sell or transfer whole or important parts of business of the financial institution to other persons according to the resolution of a shareholder meeting by a vote of not less than three quarters of the total number of shareholders attending the meeting and entitled to vote;
- (2) purchase or acquire whole or important parts of businesses of other companies according to the resolution of a shareholder meeting by a vote

of not less than three quarters of the total number of shareholders attending the meeting and entitled to vote;
(3) enter into a contract, allow or assign other persons who are not directors, managers or officers of the financial institution with the absolute or part of power of management of the financial institution, or merge the business with other persons with an objective towards profit and loss sharing.

The approval under the first paragraph may be granted with any rule to be complied with by the financial institution and the Bank of Thailand shall notify such approval to the Minister without delay.

Section 44 Financial institutions except for credit foncier companies may accept deposits of money subject to withdrawal at the end of a specified period by issuing a certificate of deposit.

The certificate of deposit shall contain the following particulars: (1) the designation of it as a certificate of deposit;
(2) the name of financial institution which issues the certificate of deposit; (3) the province where the issuer of the certificate of deposit is located;
(4) the date on which the certificate of deposit is issued;
(5) an unconditional agreement to pay a sum certain in money including interests (if any);
(6) maturity date;
(7) the place of payment;
(8) the name of depositor or a mention that it is payable to bearer;
(9) the signature of the person authorized to sign on behalf of the financial institution which issues the certificate of deposit.

Section 45 The provisions of the Civil and Commercial Code Section 764 to

Section 766, Section 899 to Section 907, Section 911, Section 913 (1) and (2), Section 914 to Section 916, the first and third paragraph of Section 917, Section 918 to Section 922, Section 925, Section 926, Section 938 to Section 942, Section 945, Section 946, Section 948, Section 949, Section 959, Section 967, Section 971, Section 973, Section 986, Section 994 to Section 1000, Section 1006 to Section 1008, Section 1010 and Section 1011 shall apply to certificate of deposit *mutatis mutandis*.

Section 46 Where it is deemed appropriate, the Bank of Thailand may prescribe the following matters in the notification for a financial institution to comply with:

- (1) interests or discounts chargeable;
- (2) interests or discounts payable;
- (3) service charges that may be demanded;
- (4) earnestments that may be demanded;
- (5) securities in the form of property that shall be demanded;
- (6) benefits that may be demanded from transactions similar to credits granting;
- (7) penalties that may be demanded.

Any and all the monies, properties or other things whose values can be assessed in terms of money, which any depositor or other person receives from a financial institution, officer or employee of a financial institution, by reason of money deposits, borrowing money or receiving money, or which a financial institution, an officer or an employee of a financial institution receives by reason of the carrying on such business of the financial institution, shall be regarded as interests, discounts or service charges, as the case may be, provided that the service charges prescribed by the Bank of Thailand under (3) shall not be regarded as interests or discounts chargeable by the financial institution under (1). The stipulation under the first paragraph may be provided in accordance with type of business, borrowing, accepting of money from the public, or other activities that financial institutions may demand or pay. The stipulation may prescribe the methods of calculation and time period for payment or collection.

Section 47 A financial institution may outsource to external persons for providing services in its operation in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Division 4

Restriction on Granting of Credits

Section 48 Subject to Section 59, no financial institution shall, either directly or indirectly:

- (1) grant credits, enter into transactions similar to credits granting or guarantee to its director, manager, deputy manager, assistant manager or person holding an equivalent position which is called otherwise, person with power of management, or to a related person of such persons, except granting of credits by means of credit card according to the maximum limit prescribed by the Bank of Thailand or granting of credits in form of employee benefits to such persons in accordance with the rule as prescribed in the notification of the Bank of Thailand;
- (2) accept, give aval or intervene for honor of bills which its director, manager, deputy manager, assistant manager or person holding an equivalent position which is called otherwise, person with power of management, or a related person of such persons is a drawer, an issuer or an indorser;
- (3) pay money or give other properties to its director, manager, deputy manager, assistant manager or person holding an equivalent position which is called otherwise, person with power of management, or a related person of such persons as remuneration for or by reason of any transaction or business of the financial institution other than gratuities, salaries, bonuses and other allowances which may normally be paid to them;
- (4) sell, give or rent any properties to its director, manager, deputy manager, assistant manager, person holding an equivalent position which is called otherwise, person with power of management, major shareholder or a related person of such persons, or purchase or rent any property from such person with aggregate value exceeding that prescribed by the Bank of Thailand unless permitted by the Bank of Thailand;
- (5) grant any other benefit to its director, manager, deputy manager, assistant manager or person holding an equivalent position which is called otherwise, person with power of management, or a related person of such persons under the rule as prescribed in the notification of the Bank of Thailand.

Section 49 Subject to Section 59, no financial institution shall grant credits, invest, incur contingent liabilities or enter into transactions similar to credits granting to major shareholders, or to business with related interest, either one or several transactions in combination, at the end of any one day for each person, in excess of five percent of any one or several types of its capital funds, or in excess of twenty-five percent of the total liabilities of such major shareholder or business with related interest, whichever is lower. In this regard, the calculation of credits, investments, contingent liabilities or transactions similar to credits granting shall include those granted to related person of the major shareholder as well. Where it is deemed appropriate, the Bank of Thailand has the power to prescribe the maximum ratio in granting credits, investing, incurring contingent liabilities or entering into transactions similar to credits granting to major shareholder or business with related interest to be higher than the ratio prescribed in the first paragraph in accordance with the rules as prescribed in the notification of the Bank of Thailand.

The granting of credits, investment, incurring of contingent liabilities or entering into transactions similar to credits granting as prescribed in the first paragraph shall be in accordance with the rule as prescribed in the notification of the Bank of Thailand. Business with related interest under the first and second paragraph means a company that the financial institution, its director, person with power of management, or a related person of those persons hold shares in combination in excess of ten percent of the total shares sold of such company.

Section 50 No financial institution shall grant credits, invest in, incur contingent liabilities or enter into transactions similar to credits granting to any one or several persons jointly in any project, or for the same purpose, at the end of any one day, in excess of twenty-five percent of any one or several types of its capital funds in accordance with the rule as prescribed in the notification of the Bank of Thailand.

With regards to the stipulation under the first paragraph, the Bank of Thailand may prescribe a specific amount of money or ratio lower than the prescribed ratio.

In the case of merger and acquisition of any financial institution, debts restructuring, selling or disposing of assets to an asset management company, or for any other appropriate reason, the Bank of Thailand may temporarily grant the financial institutions the exemption from compliance with the first paragraph.

In the case where the person under the first paragraph is a company, the amount of credits, investments, contingent liabilities or transactions similar to credits granting shall not exceed the ratio to the equity or capital funds of such company as prescribed by the Bank of Thailand unless exempted by the Bank of Thailand.

In the case where credits, investments, contingent liabilities or transactions similar to credit granting are made to any juristic person, the amount of credits, investments, contingent liabilities or transactions similar to credits granting made to the parent company, subsidiary and affiliate shall also be accounted as those made to such juristic person.

In the case where credits, investments, contingent liabilities or transactions similar to credit granting are made to any person, the amount of credits, investments, contingent liabilities or transactions similar to credit made to the related person shall be accounted as those made to such person.

Granting credits through purchasing, discounting or rediscounting bills under the first paragraph shall be deemed as granting of credits to the holder who sold the bills and to the person who is liable to the bills at any step along the line except for those bills in accordance with the rule as prescribed in the notification of the Bank of Thailand.

In the case where any financial institution have a risk hedging from a financial institution or other companies against credits, investments, contingent liabilities, or transactions similar to credits granting in accordance with the rule as prescribed in the notification of the Bank of Thailand, it shall be deemed that such financial institution grants credit, invests, incurs contingent liability or enters into transactions similar to credits granting to the financial institution or company providing the risk hedging as mentioned under the first paragraph.

Section 51 No financial institution shall grant credits, invest, incur contingent liabilities or enter into transactions similar to credits granting to each type of business in excess of the ratio to its capital funds or assets as prescribed in the notification of the Bank of Thailand.

Section 52 The provisions under Section 50 and Section 51 shall not apply to a financial institution in the following cases:

- (1) granting credits or incurring contingent liabilities not exceeding the amount that is guaranteed for the principal and interest by the Ministry of Finance;
- (2) granting credits to or incurring contingent liabilities for the Financial Institutions Development Fund or the Bank of Thailand;
- (3) investing by purchasing Thai Government securities, the Bank of Thailand securities, the Financial Institutions Development Fund securities, or the Deposit Protection Agency securities, securities issued by state enterprises established under specific laws, or securities guaranteed for the principal and interest by the Ministry of Finance, the Bank of Thailand, or the Financial Institutions Development Fund or the Deposit Protection Agency, but shall not exceed the par value;
- (4) granting credits which are guaranteed by deposits at that financial institution, Thai Government securities, the Bank of Thailand securities, the Financial Institutions Development Fund securities or the Deposit Protection Agency securities, securities issued by state enterprises established under specific laws or securities guaranteed for the principal and interest by the Ministry of Finance, the Bank of Thailand, the Financial Institutions Development Fund or the Deposit Protection Agency, but shall not exceed the amount of such deposits guaranteed or the par value of such securities;
- (5) underwriting of securities in accordance with the rule as prescribed in the notification of the Bank of Thailand;
- (6) interbank lending in accordance with the rule as prescribed in the notification of the Bank of Thailand;
- (7) granting credits, investment, incurring contingent liabilities or undertaking of transactions similar to credits granting, of which the risk is minimal or is equivalent to that of government securities in accordance with the rule as prescribed in the notification of the Bank of Thailand;
- (8) issuing commercial letters of credit.

Division 5

Financial Business Group

Section 53 Financial business group is composed of financial institutions and other companies which undertake financial businesses or supporting businesses with the following characteristics:

- (1) financial business group which is composed of a financial institution as the parent company and one or more companies as subsidiaries; or
- (2) financial business group which is composed of a non-financial institution as the parent company and a financial institution as subsidiary. In this regard, there may be one or several subsidiaries as affiliates of such financial institution.

Section 54 No financial business group shall be established unless permitted by the Bank of Thailand in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 55 The provisions under Section 16 to Section 22 shall apply to the holding or possessing of shares of the parent company of a financial institution *mutatis mutandis*.

The provision under Section 25 shall apply to the appointment of a director, a manager, a person with power of management or an advisor of the parent company of a financial institution and subsidiaries undertaking financial businesses of the financial institution *mutatis mutandis*.

The provisions under the first and second paragraph shall not apply to the parent company or subsidiary of a financial institution in the case where there is a law which regulates the undertaking business of the parent company or subsidiary of the financial institution and has already prescribed specific rules for such matters.

Section 56 Companies of a financial business group shall undertake only financial business or supporting business as prescribed in the notification of the Bank of Thailand and shall not undertake any commercial or other businesses.

In undertaking financial business or supporting business under the first paragraph, the Bank of Thailand may prescribe in the notification rule for undertaking such business unless the law regulating such business has already prescribed specific rule for such matters.

Section 57 For the purpose of the examination of the financial business group stability, the Bank of Thailand shall have the power to supervise and examine the financial institution, the parent company, subsidiary and affiliate of the financial institution as if it were the same juristic person in accordance with the rule as prescribed in the notification of the Bank of Thailand unless the law regulating such business has already prescribed specific rule for such matters.

In acting under the first paragraph, the Bank of Thailand shall have the power to prescribe the ratio of capital funds or equity of the financial business group in proportion to assets, liabilities, contingent liabilities or variables and any other risks, or to prescribe other ratios for the financial business group of the financial institution and shall have the power to stipulate the financial business group to disclose information among each other in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 58 No financial institution shall establish or acquire a subsidiary unless permitted by the Bank of Thailand.

In granting the permission under the first paragraph, the Bank of Thailand may prescribe any other condition with which the financial institution and its subsidiary shall comply. No financial institution shall purchase or possess shares of subsidiary with an aggregate value in excess of the ratio of the total capital funds or one or several types of capital funds in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 59 A financial institution may grant credits or enter into transactions with their respective parent company, subsidiary or affiliate, but shall not grant credits or enter into transactions in excess of what prescribed in the notification of the Bank of Thailand unless permitted by the Bank of Thailand.

Transactions under the first paragraph shall include:

- (1) purchase or sale of assets including assets with a repurchase agreement from the parent company, subsidiary or affiliate;
- (2) receipt of securities issued by the parent company, subsidiary or affiliate as collateral in credit granting, issuance of letter of guarantee or issuance of letter of credit for the parent company, subsidiary or affiliate;
- (3) any transaction beneficial to the parent company, subsidiary or affiliate. Any credit granting or transaction with related person of the parent company, subsidiary or affiliate shall be considered credit granting or transaction with such company.

Division 6

Asset Classification and Provisioning

Section 60 A financial institution shall classify assets and contingent liabilities which are impaired or may be impaired, and shall write them off from the account or set provisions for such assets and contingent liabilities in accordance with the rule as prescribed in the notification of the Bank of Thailand. Where it is apparent that upon deducting the classified assets or contingent liabilities, which have not been written off or which provisions have not been set, from the capital fund, the remaining capital is less than the amount required to maintain in accordance with Section 30, the Bank of Thailand shall have the power to set any relevant measure to be taken by such financial institution until the rule under the first paragraph has been complied with.

If the stipulation under the first paragraph results in requiring the financial institution to increase asset write off from the account or to increase provision, an announcement shall be made no less than thirty days prior to the enforcement date.

Section 61 A financial institution shall set provision for unimpaired assets and contingent liabilities in accordance with the rule as prescribed in the notification of the Bank of Thailand, but shall not exceed five percent of the unimpaired assets and contingent liabilities.

Section 62 A financial institution shall cease recognizing and reverse accrued interest received as income from classified assets in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Division 7

Asset Management and Maintenance of Liquid Assets

Section 63 A financial institution shall manage the assets, liabilities and contingent liabilities such that they correlate to the deposits, borrowings or acceptance of money from the public in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 64 A financial institution shall maintain liquid assets in proportion to the total or each type of deposits or loans at the ratio not less than that prescribed by the Bank of Thailand.

The Bank of Thailand may mandate a financial institution to maintain liquid assets of certain types or of all types, or set a ratio for each type on a general basis, or on a specific basis where appropriate.

If the stipulations in the first and second paragraph should cause financial institutions to increase the liquid asset ratio, an announcement shall be made no less than fifteen days prior to the enforcement date.

Section 65 Liquid assets consist of: (1) cash;
(2) deposits at the Bank of Thailand;
(3) net deposits at other financial institutions;
(4) unencumbered certificate of deposits;
(5) unencumbered Thai Government securities, Bank of Thailand securities or Financial Institutions Development Fund securities;
(6) unencumbered debentures or bonds that the Ministry of Finance, Bank of Thailand or the Financial Institutions Development Fund guarantee either only the principal or both principal and interest;
(7) other assets which the Ministry of Finance, Bank of Thailand or the Financial Institutions Development Fund ultimately undertake to indemnify losses in accordance with the rule as prescribed in the notification by the Bank of Thailand;
(8) other assets which are liquid and creditworthy in accordance with the rule as prescribed in the notification of the Bank of Thailand. Liquid assets as in (4), (5) (6) and (8) must be transferrable.

Division 8

Accounting, Reporting and Auditors

Section 66 A financial institution shall prepare its accounts to state the actual operating performance and financial condition which must comply with the accounting standard prescribed by the professional institution, approved by relevant government authority and consistent with the rule as prescribed in the notification of the Bank of Thailand.

Section 67 A financial institution shall prepare financial statements for every six month period and twelve month period which is the accounting year of such financial institution in accordance with the forms prescribed in the notification of the Bank of Thailand. In addition, the financial statements shall be audited and provided opinion by an auditor approved by the Bank of Thailand as a qualified auditor of such accounting year.

The financial institution shall announce the financial statements prepared in accordance with the first paragraph which have been audited by an auditor and approved by director of the financial institution. Such financial statements shall be posted in a public area at the head office and branches of such financial institution, published in any media in accordance with the rule as prescribed in the notification of the Bank of Thailand, and submitted to the Bank of Thailand.

Preparation of financial statements for the first six month of the accounting year under the first paragraph, audit and opinion under the first paragraph and announcement and submission to the Bank of Thailand under the second paragraph shall be completed within three months from the end of the accounting period.

Preparation of annual financial statements for the accounting year under the first paragraph, audit and opinion under the first paragraph shall be completed prior to submission to the shareholder general meeting. The announcement and submission to the Bank of Thailand under the second paragraph shall be completed within twenty-one days from the date that the general shareholder meeting approves the financial statements. The whole process must not exceed four months from the end of the accounting year.

The provision of this Section shall not apply to foreign commercial bank's branch.

Section 68 A foreign commercial bank's branch shall publish the financial statement of such foreign commercial bank within one month from the date that the foreign commercial bank announces its financial statements by posting in an open area at the office of the foreign commercial bank's branch.

A foreign commercial bank's branch shall prepare financial statements every twelve month period which is the accounting year of such foreign commercial bank's branch in accordance with the forms prescribed in the notification of the Bank of Thailand.

The foreign commercial bank's branch shall announce the financial statements under the second paragraph which have been audited and which opinion has been provided by an auditor. Such financial statements shall be posted in a public area of the branch office of such foreign commercial bank's branch, published in any media in accordance with the rule prescribed in the notification of the Bank of Thailand, and submitted to the Bank of Thailand.

Section 69 Auditors approved by the Bank of Thailand under Section 67 shall adhere to the code of conducts and ethics in performing audits in order to express opinions on the financial statements in accordance with the accounting standards stipulated in the law on accounting as well as any additional stipulations prescribed by the Bank of Thailand, and shall provide opinions on the financial statements within a suitable period to allow the financial institution to comply with the prescribed timeline under Section 67.

In the case where a financial institution has made any incorrect supporting accounting document or incorrect recording, the auditor shall disclose material fact of the accounts that affects the financial statements on the audit report which he has to affix signature to certify as well as report such matter to the Bank of Thailand.

The Bank of Thailand may withdraw its approval of any auditor, in accordance with Section 67, who fails to comply with the provision under the first or second paragraph.

Section 70 In the case where the auditor has reasonable ground to suspect that there is a fraudulent act in any financial institution, the auditor shall promptly notify the Bank of Thailand and submit relevant document or evidence to the Bank of Thailand.

Section 71 The Bank of Thailand may require a financial institution, parent company, subsidiary affiliate or company within the financial business group of such financial institution to submit report or information in any means of media, or present any document periodically or occasionally as prescribed by the Bank of Thailand, as well as to require an explanation to clarify or amplify such report, information or document in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The Bank of Thailand may order the financial institution to have its director, manager, officer, employee, person with power of management or auditor to testify or present information, account, document and other evidences related to the business of the financial institution within a specified period.

The financial statement, report, information, document or explanation submitted or presented under the first and second paragraph shall be complete and correct. In the case where the Bank of Thailand deems that the financial statement, report, information, document or explanation submitted or presented by a financial institution under the first paragraph are incomplete or ambiguous, or in the case where it deems necessary or appropriate, the Bank of Thailand shall have the power to appoint an auditor or specialist to conduct an examination and report the result thereof to the Bank of Thailand at the expense of such financial institution.

Division 9

Merger, Transfer and Dissolution

Section 72 Merger of any financial institution with other financial institutions shall result in the cancellation of the license of such financial institution.

Section 73 In the case where any financial institution intends to merge with other financial institutions or transfer or acquire the whole or an essential part of business to or from other financial institutions, or in the case where any financial institution or major shareholder of any financial institution intends to purchase or possess shares in other financial institutions, whether it is the same type or different type of financial institution, in order to merge or transfer or acquire business which shall result in the condition and the operation of the financial institution becoming more stable, the financial institution or the major shareholder of a financial institution, as the case may be, shall propose a project with operational details to the Bank of Thailand.

Upon approval, the Bank of Thailand shall issue a notification of such approval, and may also prescribe the implementation period and any rules therein.

In the implementation of the approved project under the first paragraph, if the relevant financial institution finds it necessary to take any actions related to the following provisions, these provisions shall not apply, as the case may be:

- (1) Sections 237, Section 1117, Section 1119, Section 1145, Section 1185, Section 1220, Section 1222, Section 1224, Section 1225, Section 1226, Section 1238 and Section 1240 of the Civil and Commercial Code;
- (2) Section 31, the second paragraph of Section 33, Section 52, the second paragraph of Section 54, Sections 102, Section 107, Section 136 (2), Section 137, Section 139, Section 140, Section 141, Section 146, Section 147, and Section 148 of the Public Limited Company Act B.E. 2535;
- (3) Section 114 and Section 115 of the Bankruptcy Act B.E. 2483, only the part that is relevant to the transfer of properties or any act done in relation to the properties due to the merger or acquisition.

In the implementation under the second paragraph, in the case where any damage occurs to any person, the merging financial institutions or the acquiring financial institutions, whether in whole or in part, shall be jointly liable to compensate for such damages.

Section 74 Upon the announcement of the approval of the Bank of Thailand in accordance with Section 73, financial institutions which are to merge, transfer or acquire in whole or in part of the business shall make arrangement to hold a shareholder meeting to consider the merger, transfer or acquisition of business. In such event, provisions related to shareholder meeting for the merger, transfer or acquisition of business under the Civil and Commercial Code or the laws on public limited company, as the case may be, shall not apply.

For the shareholder meeting under the first paragraph, such financial institutions shall cease to accept registration of share transfers after seven days from the date of announcement of the approval of the Bank of Thailand in accordance with Section 73, until the date of the shareholder meeting and shall call a shareholder meeting. The appointment notice of the shareholder meeting shall be delivered to the shareholders for acknowledgement at least seven days but not more than fourteen days in advance. In this regard, the notice of the shareholder meeting shall be published in accordance with the rule as prescribed in the notification of the Bank of Thailand.

In the meeting, if there are affirmative votes not less than three quarters of the number of votes of the shareholders attending the meeting, such merger, transfer or acquisition of the business shall be deemed lawful.

In the case where a government agency or a state enterprise possesses shares in the amount of ninety percent or more in any financial institution, once the approval of the Bank of Thailand is announced in accordance with Section 73, such approval shall be deemed as the resolution of the shareholder meeting. In this respect, such merger, transfer or acquisition of the business shall be deemed lawful without having to make arrangement to hold a shareholder meeting under the first paragraph.

No person shall file a bankruptcy lawsuit against the financial institution under Section 73 during the process of merger, transfer or acquisition of the business in accordance with the approval announced by the Bank of Thailand under Section 73.

Section 75 With regard to the financial institution proceeding in accordance with the first paragraph of Section 73, if there is a transfer of assets with collateral other than the right of mortgage, the right of pledge or other rights arising from guarantee which shall be passed to the transferee in accordance with Section 305 of the Civil and Commercial Code, such other collaterals shall be passed to the merging or acquiring financial institution, as the case may be.

Section 76 With regard to the financial institution proceeding in accordance with the first paragraph of Section 73, if there is a lawsuit to enforce claims pending in the Court, the merging or acquiring financial institution, as the case may be, shall subrogate the right as the litigants in the case and may adduce new evidence to object previously submitted document, cross-examine witness already heard and raise objection on evidence already adduced. In the case where the judgment has been rendered, such financial institution shall subrogate the rights as the judgment creditor or debtor.

Section 77 The transfer of the business, in whole or in part, with the approval of the Bank of Thailand shall proceed in accordance with this Division. In this regard, transfer of claims pertaining to such transfer of business does not necessitate the giving of notice to debtors as prescribed in Section 306 of the Civil and Commercial Code and shall not prejudice the rights of debtors to set up a defense in accordance with the second paragraph of Section 308 of the Civil and Commercial Code.

Section 78 Any financial institution intending to dissolve or suspend its operation shall be granted prior approval from the Bank of Thailand in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 79 The Bank of Thailand, upon granting approval in accordance with this Division, shall report to the Minister of Finance without delay.

Division 10

General Supervision

Section 80 No financial institution shall:

(1) reduce its capital without an approval of the Bank of Thailand. Such approval may be granted with rule on the capital reduction. In this regard, Section 1117, Section 1225 and Section 1226 of the Civil and Commercial Code and the first paragraph of Section 139 and Section 141 of the Public Limited Company B.E. 2535, as the case may be, shall not apply;

(2) purchase or hold immovable property except for:

(a) those used as premises for the business of the financial institution or as places of residence or welfare facility for its officers and employees as appropriate upon the approval of the Bank of Thailand which rule may be prescribed thereto;

(b) those acquired as a result of a debt settlement, a guarantee in respect of credit granting or the purchase of an immovable property mortgaged to the financial institution at an auction conducted pursuant to an order of a court or an official receiver, but such immovable property shall be disposed within five years from the date of passing of ownership of such immovable property to the financial institution and in the case where it deems necessary, the Bank of Thailand may grant the extension to the period for disposing such immovable property which rule may be prescribed thereto;

(c) those purchased or held by a finance company undertaking housing finance or credit foncier company for business purpose in accordance with the rule as prescribed by the Bank of Thailand;

(3) accept its own shares as security or accept shares of a financial institution of the same type from other financial institutions of the same type as security.

Section 81 A financial institution shall notify the Bank of Thailand in writing within fifteen days from the date of the occurrence of the followings:

(1) the amendment of its Memorandum of Association or Articles of Association;

(2) the change of its director, managing director, manager or person with power of management.

Section 82 For the purpose of the Bank of Thailand's examination of financial institutions, financial institutions shall keep information, account, document, seal or other evidences related to its business, assets and liabilities in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Section 83 In the case where any financial institution fails to undertake financial institution business as licensed in the volume generally undertaken by financial institutions in accordance with rule as prescribed in the notification of the Bank of Thailand, the Bank of Thailand may order such financial institution to undertake the business in accordance with the aforesaid rule. In this regard, rule and period of time may also be prescribed therein. In case of financial institution failing to comply with the order of the Bank of Thailand, the Bank of Thailand may order the closure of such financial institution.

When the Bank of Thailand has made the closure order in accordance with the first paragraph, it shall propose to the Minister of Finance to withdraw the license of such financial institution and such financial institution shall be liquidated.

Chapter 4

Examination of Financial Institutions

Section 84 For the purpose of financial institution's good governance, the Bank of Thailand shall have power to prescribe in the notification requiring a financial institution to set up committees as well as to prescribe the components, qualifications, and powers and duties of the committees.

Section 85 The Bank of Thailand shall have power to appoint its officers or external persons as financial institution examiners to examine business, assets and liabilities of financial institutions, parent company, subsidiary or affiliate, and company within financial business group as well as debtor and related person of such financial institution, whether on a general or specific basis.

The financial institution examiner shall have powers and duties to:

(1) order a director, an officer or employee of a financial institution, an auditor of a financial institution and a person responsible for collecting or processing data of the financial institution by using either computer system or any other instrument, to testify on the business, assets and liabilities of the financial institution, to submit copies of or to present information, account, document, seal or other evidences;

(2) enter into business premise of a financial institution or of a service provider supporting to a financial institution in order to examine the operations of the financial institution to be in compliance with this Act.

(3) enter into any premise in order to examine where there is a reasonable ground to suspect that there is any undertaking of business violating this Act or that there is evidence or document related to such offence, during the time between sunrise and sunset or during business hours of such premise. In case of incomplete examination after having entered and commenced, such examination may continue into the night or beyond the business hours of such premise as authorized by the Bank of Thailand;

(4) seize or attach property, document or thing related to an offence under this Act for the purpose of the examination or prosecution. In issuing such seizure or attachment order, rationale, necessity and right of the person whose properties are being seized or attached shall be stated;

(5) examine the condition or operation at the business premise of the parent company, subsidiary, affiliate and company within the financial business group of such financial institution, including to order relevant person to testify, submit copies of or present information, account, document, seal or other evidences pertaining to the business, assets and liabilities;

(6) examine the condition or operation at the business premise of the debtor or related person of a financial institution including to order relevant person to testify or present information, account, document, seal or other evidence pertaining to the business, assets and liabilities in the event that there is a reasonable ground to suspect that the financial institution has violated Section 48, Section 49, Section 50 Section 66 or there is reasonable ground to believe that a fraudulent offence is committed in the course of business of the financial institution.

For the performance of financial institution examiner's duties under the first paragraph, a financial institution examiner shall have power to assign any person to assist in performing the examiner's duties.

The financial institution examiner shall submit the examination report under the first paragraph to the Bank of Thailand in the forms as prescribed in the notification of the Bank of Thailand.

Section 86 In the performance of duty of the financial institution examiner and person under the third paragraph of Section 85, relevant persons shall provide due convenience as appropriate.

Section 87 In the performance of duty under Section 85, the financial institution examiner shall present the identification card issued by the Bank of Thailand to relevant persons.

The identification card of a financial institution examiner shall be in the form as prescribed in the notification of the Bank of Thailand.

Section 88 A financial institution examiner shall be an officer under the Criminal Code.

Chapter 5

Rectification of Condition or Operation of Financial Institutions

Section 89 In the case where any financial institution, director, manager or person with power of management violates or fails to comply with this Act, or stipulations or notifications issued by virtue of this Act, or rules attached to the license, the Bank of Thailand shall have power to take the following actions;

- (1) to issue written warning to the financial institution or relevant person to refrain from actions in violation of, or to take action in compliance with this Act;
- (2) to issue an order to prohibit any action in violation of or to take action in compliance with this Act or stipulations or notifications issued by virtue of this Act or rules attached to the license;
- (3) to issue an order to remove any or all directors, managers or persons with power of management. Such order shall be deemed to be a resolution of the shareholder meeting;

In the case where the director, manager or person with power of management is removed under (3), if such person could prove that he is not involved in or is not responsible for such action, the Bank of Thailand may appoint such person to resume his former position.

Section 90 In the case where condition or operation of financial institution may cause damage to public interest, the Bank of Thailand shall have power to take the following actions:

- (1) to order such financial institution to rectify the condition or operation;
- (2) to order such financial institution to reduce or increase its capital or both within a specified period but shall not exceed ninety days from the date the financial institution receives the order. If such financial institution does not comply with or fails to comply with the order within the specified period, such order shall be deemed to be a resolution of the shareholder meeting from the end of specified period, except in the case of urgently necessary to sustain the condition and operation of the financial institution, the Bank of Thailand may order such financial institution to reduce or increase its capital or both immediately and such order shall be deemed to be a resolution of the shareholder meeting. In this regard, the provisions of Section 1117, Section 1220, Section 1222, Section 1224, Section 1225, Section 1226 of the Civil and Commercial Code, and the second paragraph (2) of Section 136, Section 137, Section 139 and Section 141 of the Public Limited Company Act B.E. 2535 shall not apply to the reducing or increasing of capital, or the offering for sale of the newly issued shares
- (3) to order such financial institution to suspend its operations, in whole or in part, within a specified period;
- (4) to order such financial institution to immediately remove any or all of its directors, managers or persons with power of management and appoint other persons to replace the person so removed as appropriate. Such order shall be deemed to be a resolution of the shareholder meeting;
- (5) to order the control of or the closure of such financial institution's business.

The Bank of Thailand shall report any action taken under the first paragraph to the Minister of Finance to acknowledge without delay and if the Bank of Thailand has issued a closure order under the first paragraph (5), it shall propose the Minister of Finance to withdraw the license of such financial institution.

Section 91 Person whose employment is terminated due to the removal from the position of director, manager or person with power of management under Section 89 (3) or Section 90 (4) shall not be eligible for compensation under the law on labor protection or the law on state enterprise labor relations, or any other benefits under employment contract due to such dismissal except for the eligible benefits derived from the agreement under the law on provident fund.

Section 92 The following events shall be deemed that the financial institution's condition or operation may cause damage to public interest:

- (1) such financial institution, any of its director, manager or person with power of management violates the order issued under Section 89 (2);
- (2) such financial institution, any of its director, manager or person with power of management violates or fails to comply with Section 30, Section 33, Section 34, Section 48, Section 49, Section 50, Section 51, Section 57, Section 58, Section 59, Section 60, Section 61, Section 63, or Section 64;
- (3) such financial institution, any of its director, manager or person with power of management fails to prepare its account to state the actual operating performance and financial condition in accordance with Section 66, or makes false entry or falsifies account, document, to the extent that it cannot be evaluated the soundness of the financial institution's condition and operation in compliance with the rules on capital fund, assets, liquid assets, provision, asset classification and other matters under this Act;
- (4) such financial institution suspends repayment of its due obligation;
- (5) such financial institution has incurred losses and the Bank of Thailand has a reason to anticipate that it is unable to maintain its capital fund as required by law, regardless of whether it is the event under Section 96 or not.

Section 93 Any financial institution suspending the repayment of its due obligation shall immediately notify such suspension with reason thereof to the Bank of Thailand and shall not undertake any business unless a written permission is granted by the Bank of Thailand.

The Bank of Thailand shall appoint a financial institution examiner to investigate the circumstances under the first paragraph and shall, upon receiving the investigation report from the financial institution examiner, have power to order such financial institution to be placed under control, to order the closure of such financial institution or to issue any order as deemed appropriate.

The Bank of Thailand shall, upon ordering the closure under the second paragraph, propose the Minister of Finance to withdraw the license of such financial institution.

Section 94 No financial institution shall pay money, property or remuneration which would cause its capital fund to be lower than the required capital fund to be maintained under Section 30 as follows:

- (1) to pay money or any other property to the shareholder as return distribution;
- (2) to pay remuneration with respect to management or any other benefits that is not normal wage to director, manager or person with power of management.

The Bank of Thailand may permit a financial institution to repurchase, redeem, release, or acquire shares or benefits as a shareholder, to the extent that it will reduce financial obligation or to rectify financial condition of such financial institution.

Section 95 In the case where a financial institution maintains its capital fund lower than the required capital fund to be maintained under Section 30, such financial institution shall propose a project for rectifying its condition and operation to the Bank of Thailand for approval in accordance with the following rules:

- (1) the project shall be proposed within sixty days from the date that financial institution becomes aware of the situation;
- (2) the project under (1) shall at least consist of the following lists: (a) process to restore capital fund to an adequate level;
- (b) level of capital fund expected to be maintained in each quarter during the project period;
- (c) a business plan;
- (d) timeline for completing the project which shall not exceed one year from the date on which the financial institution becomes aware that its capital fund is lower than the required capital fund under Section 30.

Upon receiving the project, the Bank of Thailand shall approve or disapprove the project within thirty days from the date of receiving the project and shall inform the financial institution within such period. In this regard, the Bank of Thailand may also prescribe any rule or time clause.

In the event that the financial institution fails to propose the project within the specified period under (1), or no approval is granted to the proposed project, or the financial institution fails to implement the project, or fails to proceed in accordance with the approved project or the rule or time clause stipulated by the Bank of Thailand under the second paragraph, the Bank of Thailand shall have power to order the financial institution to take any action as deemed appropriate or to order the closure of such financial institution.

The Bank of Thailand, upon ordering the closure under the third paragraph, shall propose to the Minister to withdraw the license of such financial institution.

Section 96 In the case where a financial institution maintains its capital fund lower than sixty percent of the ratio prescribed in Section 30, the Bank of Thailand shall order the financial institution to be placed under control except where the Bank of Thailand deems that such order would cause a severely adverse effect or damage to the economy as a whole or such financial institution would rapidly rectify its capital

fund to be maintained not lower than the ratio prescribed by law, the Bank of Thailand may not order to place the financial institution under control.

In addition to the proceeding under the first paragraph, the Bank of Thailand may order such financial institution to dissolve and liquidate its subsidiary if it appears that the assets of the subsidiary are insufficient for its liabilities or the subsidiary is unable to normally repay its debt for more than three consecutive months. The Bank of Thailand may issue any other order as deemed appropriate.

Section 97 In the case where a financial institution maintains its capital fund lower than thirty-five percent of the ratio prescribed in Section 30, the Bank of Thailand shall order the closure of such financial institution except where the Bank of Thailand deems that such order would cause a severely adverse effect or damage to the economy as a whole, the Bank of Thailand may not order the closure of the financial institution.

The Bank of Thailand, upon ordering the closure under the first paragraph, shall propose to the Minister to withdraw the license of such financial institution.

Section 98 When the Bank of Thailand has issued an order to close any financial institution in accordance with Section 90 (5), Section 93, Section 95 or Section 97 and the Minister has withdrawn the license, such financial institution shall be liquidated.

Section 99 When the Bank of Thailand has issued an order to a financial institution to undertake any action or has received any report related to the financial institution under this Chapter, the Bank of Thailand shall report to the Minister without delay.

Chapter 6

The Control of Financial Institutions

Section 100 In this Chapter,

"Deposit Protection Agency" means the Deposit Protection Agency under the law on deposit protection agency.

Section 101 When the Bank of Thailand has issued an order to place any financial institution under control, it shall notify the order in writing to the Deposit

Protection Agency and such financial institution. The notice of the order shall be posted in a public area at the premise of such financial institution and also be published in the Government Gazette and in any media in accordance with the rule as prescribed in the notification of the Bank of Thailand.

In the case where the financial institution under the first paragraph is a listed company in the Securities Exchange, the Bank of Thailand shall also notify the order in writing to the Securities Exchange.

Section 102 When the Bank of Thailand has ordered any financial institution to be placed under control, the Bank of Thailand shall issue a notification of the appointment of a Control Committee consisting of a chairman and other members of at least two but not exceeding four, provided that at least one member shall be proposed by the Deposit Protection Agency.

In the case where the chairman is unable to perform his duty, the Bank of Thailand shall issue a notification of the appointment of any member to be in charge.

Resolution of the committee is determined by a majority of votes. Each member shall have one vote. In the case of tie, the chairman shall be entitled to cast an additional deciding vote.

Section 103 Members of the Control Committee shall have the same qualifications and shall not possess the same prohibited characteristics as those of the director of a financial institution under Section 24, and shall have no conflict of interests with respect to their powers and duties as members of the Control Committee.

The Control Committee shall have the same power and duty as the director of the financial institution.

Section 104 When the Bank of Thailand has notified the control order to any financial institution, the director, officer and employee of such financial institution shall be prohibited from conducting further business of that financial institution unless authorized by the Control Committee.

The Control Committee shall have the power to appoint one or several control officers to perform any duty. The Control Committee has the power and duty to undertake all businesses of the financial institution placed under control. The chairman of the Committee shall be the representative of such financial institution.

The director, officer and employee of the financial institution placed under control shall:

- (1) take actions in order to safeguard the company's properties and interests of the financial institution;
- (2) report the business and deliver the assets including information, account, document, seals or other evidences relating to the business and assets of the financial institution to the Control Committee without delay. Any person in possessions of properties or documents of the financial institution shall notify the Control Committee thereof without delay.

Section 105 In the case where the Control Committee considers that the deposits of the financial institution placed under control bear higher than reasonable and fair interest rates the Control Committee with the approval of the Deposit Protection Agency Board shall have the power to reduce such interest rates, provided that the depositors shall be notified first and the reduction shall take effect after seven days from the date of the notification.

Section 106 In the case where the Control Committee deems that contractual obligations of the financial institution placed under control exceed due benefits, the Control Committee may negotiate with the asset owners, counterparties or relevant persons to reduce such obligations.

Section 107 In the case where the Control Committee deems that the employment contract of executives of the financial institution placed under control contains inappropriate conditions or stipulates higher than reasonable remuneration or benefits, or such financial institution incurs losses from the mismanagement or negligence of the executives, the Control Committee shall have power to dismiss, suspend or reduce the remuneration or benefits granted to such executives.

Section 108 In the case where the Control Committee deems that it is appropriate to have a merger or transfer of the business of the financial institution, the provisions in Division 9: Merger, Transfer and Dissolution of Chapter 3 shall apply to such merger or transfer of business *mutatis mutandis*. In this regard, the resolution of the Control Committee shall be deemed as a resolution of the shareholder meeting and the Control Committee shall have power to act on behalf of the board of directors of such financial institution.

Section 109 The Control Committee shall report to the Bank of Thailand whether the financial institution placed under control should continue its business operation, together with the financial information and supporting reason, within one hundred and twenty days from the date of the appointment of the Control Committee unless relaxation is granted by the Bank of Thailand.

If the Control Committee deems appropriate that the financial institution is able to continue its business operation, the Control Committee shall submit a rehabilitation project of such financial institution to the Bank of Thailand. The rehabilitation project shall at least consist of the following lists:

- (1) process to restore capital fund to an adequate level;
- (2) level of capital fund expected to be maintained in each quarter during the project period;
- (3) a business plan;
- (4) timeline for completing the project which shall not exceed one year from the date on which the Control Committee report to the Bank of Thailand under the first paragraph;
- (5) a plan of merger or transfer of the business (if any).

Upon receiving the report from the Control Committee under the first paragraph, the Bank of Thailand shall report to the Minister without delay.

Section 110 In the case where the Control Committee report to the Bank of Thailand that it is appropriate for the financial institution placed under control to continue its business operation, the Bank of Thailand shall issue an order of approval or disapproval of such report within fifteen days from the date of receipt of the report from the Control Committee.

If the Bank of Thailand approves the report of the Control Committee under the first paragraph, the rehabilitation project of the financial institution proposed by the Control Committee shall be implemented. In this regard, a control order may be revoked. Such revocation order shall be published in the Government Gazette and in any media in accordance with the rule as prescribed in the notification of the Bank of Thailand.

In the case where the Bank of Thailand issues the order to disapprove the report proposed by the Control Committee or the rehabilitation project of the financial institution cannot be proceeded for any reason, the Bank of Thailand shall order the closure of such financial institution. The Bank of Thailand, upon issuing the order of closure under the third paragraph, shall propose to the Minister to withdraw the license of such financial institution.

Section 111 In the case where the Control Committee reports that a financial institution under control is unable to continue its business operation, the Bank of Thailand shall order the closure of such financial institution and shall publish the order in the Government Gazette and in any media in accordance with the rule as prescribed in the notification of the Bank of Thailand.

The Bank of Thailand, upon issuing the order of closure under the first paragraph, shall propose to the Minister to withdraw the license of such financial institution.

Section 112 When the closure order of any financial institution is made by the Bank of Thailand under the third paragraph of Section 110 or the first paragraph of Section 111 and the license of such financial institution has been withdrawn by the Minister, the financial institution shall be liquidated.

Section 113 In the case where a financial institution is placed under control or its license is withdrawn, person purchasing debentures or other debt instruments or acquiring the claims in debts of such financial institution after such incident shall be prohibited from offsetting the debentures, debt instruments or acquired claims against the debts which such person owes to the financial institution.

Section 114 For the purpose of the control of a financial institution under this Chapter, the Control Committee or the authorized control officer shall have power to order any person to testify, produce or deliver information, account, document, seals or other evidences relating to the businesses and assets of the financial institution under control within the period prescribed by the Control Committee or the control officer.

Section 115 The members of the Control Committee and control officers shall be remunerated as prescribed by the Bank of Thailand.

Section 116 Expenses and remuneration in connection with the control of any financial institution shall be disbursed from assets of such financial institution.

Section 117 The provisions under Chapter 3: Supervision of Financial Institutions with the exception of Division 8: Accounting, Reporting and Auditors shall not apply to the financial institution during the control in accordance with this Chapter.

Section 118 When the Bank of Thailand has issued an order to a financial institution to undertake any action or has received any report related to the financial institution under this Chapter, the Bank of Thailand shall report to the Minister without delay.

Chapter 7

Supervision of Specialized Financial Institutions

Section 119 Specialized financial institutions are:

- (1) a state financial institution established under specific law;
- (2) a juristic person established under specific law as prescribed in the notification of the Minister.

Section 120 For the purpose of the effective supervision of the financial institutions system, the Minister in charge under the law on establishment of specialized financial institution may delegate the Bank of Thailand to perform the following duties, in whole or in parts, in accordance with the powers and duties of the Minister in charge as prescribed in such specific law;

- (1) to generally supervise the business of such specialized financial institution;
- (2) to have power to order the specialized financial institution to clarify the facts and give opinions, including to appoint persons to examine and report on the business or assets of such specialized financial institution;
- (3) to have power to appoint or remove any person as prescribed by law, including to set the remuneration or any other benefits to such person;
- (4) to prescribe policy guidelines to be implemented or complied with by the specialized financial institution;
- (5) to have power to order the specialized financial institution to perform or refrain from action contrary to the Government policy or the Cabinet resolution.

For the supervision of the specialized financial institution under the first paragraph, the Bank of Thailand, with the approval of the Minister, may prescribe in the notification the additional rules for the specialized financial institution to comply with or the provisions under this Act to be applied to such specialized financial institution.

Chapter 8

Penalties

Section 121 Whoever undertakes the commercial banking business, finance business or credit foncier business without permission shall be liable to imprisonment for the period of two to ten years and a fine of two hundred thousand Baht to one million Baht.

Section 122 Any financial institution which violates or fails to comply with Section 11 shall be liable to a fine not exceeding one hundred thousand Baht, and to a further fine not exceeding one thousand Baht per day for every consecutive day during which such violation continues.

Section 123 Whoever violates or fails to comply with Section 12 shall be liable to imprisonment for the period of not exceeding one year or to a fine not exceeding one hundred thousand Baht, or both and to a further fine not exceeding one thousand Baht per day for every consecutive day during which such violation continues.

Section 124 Any financial institution which violates or fails to comply with Section 13, the first paragraph of Section 15, Section 37, Section 81 or Section 82, or violates or fails to comply with notifications, stipulations or rules prescribed by virtue of the second paragraph of Section 15, the first paragraph of Section 26, Section 37 or Section 82 shall be liable to a fine not exceeding three hundred thousand Baht and to a further fine of not exceeding three thousand Baht per day for every consecutive day during which such violation continues or until rectification has been made.

Section 125 Any financial institution which violates or fails to comply with Section 20, the first paragraph of Section 21, Section 22, Section 38, the first paragraph of Section 40, Section 41, Section 44, Section 47 or Section 84, or violates or fails to

comply with notifications, stipulations or rules prescribed by virtue of Section 38, Section 39, the second paragraph of Section 40, Section 41, Section 46, Section 47 or Section 84 shall be liable to a fine not exceeding five hundred thousand Baht and to a further fine of not exceeding five thousand Baht per day for every consecutive day during which such violation continues or until rectification has been made.

Section 126 Whoever violates or fails to comply with Section 14, Section 54 or Section 56 or the parent company of financial institution which violates Section 55 shall be liable to imprisonment for the period of six months to three years or to a fine of sixty thousand Baht to three hundred

thousand Baht, or both and to a further fine of not exceeding three thousand Baht per day for every consecutive day during which such violation continues, as the case may be.

Section 127 Whoever violates or fails to comply with the second paragraph of Section 26, shall be liable to a fine of sixty thousand Baht to three hundred thousand Baht and to a further fine of not exceeding three thousand Baht per day until rectification has been made.

Section 128 Any financial institution violates or fails to comply with Section 16, Section 24, the first paragraph of Section 25, Section 29, Section 30, Section 31, Section 32, Section 34, Section 35, Section 36, Section 43, Section 48, Section 49, Section 50, Section 51, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 66, Section 67, Section 68, Section 71, the first paragraph of Section 73, Section 74, Section 78, Section 80, Section 93, Section 94 or Section 95, or violates or fails to comply with notifications, stipulations, rules, conditions or orders prescribed by virtue of Section 9, the first paragraph of Section 10, Section 16, Section 29, Section 30, Section 31, the first paragraph of Section 32, Section 33, Section 34, Section 35, Section 36, Section 42, Section 43, Section 48, Section 49, Section 50, Section 51, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 66, Section 67, Section 71, the first paragraph of Section 73, the second paragraph of Section 74, Section 78, Section 80, Section 89, Section 90 (1), (3) and (4) , Section 95 or Section 96 shall be liable to a fine not exceeding one million Baht and a further fine of not exceeding ten thousand Baht per day for every consecutive day during which such violation continues or until rectification has been made.

Section 129 In the case where there is violation of Section 20, Section 21, Section 22, Section 34, Section 48, Section 49, Section 50 or Section 59, as the case may be, where the financial institution is able to prove that circumspection in examining related person is exercised but it is still unaware and unable to prevent such violation, it shall be deemed that the financial institution has not violated under such Sections.

Section 130 Whoever violates or fails to comply with rules prescribed under Section 56 or Section 57, shall be liable to a fine not exceeding one million Baht and to a further fine of not exceeding ten thousand Baht per day for every consecutive day during which such violation continues or until rectification has been made.

Section 131 Whoever violates or fails to comply with Section 104 or fails to comply with the order of the Control Committee or control officer under Section 114 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three hundred thousand Baht or both, and to a further fine of not exceeding three thousand Baht per day for every consecutive day during which such violation continues.

Section 132 In the case where the offender of Section 121 or Section 123 is a juristic person, its director, manager or person with power of management, he shall be liable to the penalty prescribed for such offense unless he can prove that he had no part in the commission of such offence.

Subject to Section 139, in the case where a financial institution commits an offense under Section 122, Section 124, Section 125 or Section 128, its director, manager or person with power of management shall be liable to penalty prescribed for such offense unless he can prove that he had no part in the commission of such offence.

Section 133 The offense under Section 122, Section 124, Section 125, Section 128 and the second paragraph of Section 132, if the offender has not been prosecuted or the offence has not been settled out of court under Section 156 within two years from the date of the Bank of Thailand finding out the offense or within five years from the date of its commission, the prosecution of such offence shall be prescription, by no longer subject to prosecution.

Section 134 Whoever gives a false statement to the financial institution examiner or the Control Committee which may cause damage to the other or the public shall be liable to imprisonment for a term of not exceeding six months or a fine not exceeding sixty thousand Baht or both.

Section 135 Whoever obstructs or fails to comply with the order of the financial institution examiner, the Control Committee or the control officer in the performance of his duty under this Act shall be liable to imprisonment for a term of not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

Section 136 Whoever fails to facilitate the financial institution examiner, person as prescribed in the third paragraph of Section 85, Control Committee or control officer in the performance of his duty under this Act shall be liable to imprisonment for a term of not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

Section 137 Whoever removes, damages, destroys, or renders useless the seal or mark stamped or affixed by a financial institution examiner, Control Committee or control officer shall be liable to imprisonment for a term of not exceeding three year or a fine not exceeding three hundred thousand Baht or both.

Section 138 Whoever damages, destroys, conceals, takes away, loses or renders useless any property or document which a financial institution examiner, Control Committee or control officer seized, attached, kept, or ordered to be sent as evidence or for execution of the law, whether the competent officer keeps such property or document by himself or orders such person or other persons to send or keep it shall be liable to imprisonment for a term of six months to three years or a fine of sixty thousand to three hundred thousand Baht or both.

Section 139 In the case where a financial institution violates or fails to comply with Section 36, Section 50, Section 66, Section 80, Section 93, Section 94 or Section 95 or violates or fails to comply with notifications, stipulations, rules or orders prescribed by virtue of the first paragraph of Section 9, the first paragraph of Section 10, Section 33, Section 36, Section 50, Section 66, Section 71, Section 80, Section 90 or Section 95, its director, manager or person with power of management shall be liable to imprisonment for a term not exceeding one year or a fine of five hundred thousand to one million Baht or both unless he can prove that he had no part in the commission of such offence.

Section 140 Any director, manager, or person with power of management of a financial institution, who dishonestly deceives the public by the assertion of falsehood or the concealment of facts which should be revealed to the public and, by such deception, obtains a property from a number of the public so deceived or from a third person, or causes the public so deceived or a third person to execute, revoke or destroy a document of rights, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht.

Section 141 Any director, manager, or person with power of management of a financial institution, who being entrusted with the management of the property of the financial institution or of which the financial institution is a co-owner, dishonestly does any act contrary to his duties, by means whatever so as to cause damage to the usefulness in the nature of its being a property of the financial institution , shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht.

Section 142 Any director, manager, or person with power of management of a financial institution, who being in possession of a thing belonging to a financial institution or of which the financial institution is a co-owner, dishonestly converts the thing to himself or a third person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht.

Section 143 Any director, manager, or person with power of management of a financial institution, who takes away, damages, destroys or causes depreciation in value or renders useless a property which the financial institution has the duty to look after or which is in the possession of the financial institution, if it is committed in order to cause damage to the others or the public, shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding five hundred thousand Baht.

Section 144 Any director, manager, or person with power of management of a financial institution, who commits any of the following acts by knowing that a creditor of the financial institution or creditor of other persons who may avail himself of the right of the creditor of the financial institution to enforce payment of debt from the financial institution, or use or will probably use his right through the court to enforce payment in order to prevent the creditor from receiving full or part payment of the debt, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht:

- (1) removes, conceals or transfers property of the financial institution to other persons; or
- (2) entries book of account or performs any act in order to demonstrate false debt of the financial institution.

Section 145 Any director, manager, or person with power of management of a financial institution, who commits or refrains from any commission in order to obtain any unlawful gain for himself or other persons causing damage to the financial institution, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million Baht.

Section 146 Any director, manager, or person with power of management of a financial institution, who commits or permits the commission any of the following acts in order to deceitfully deprive the financial institution or its shareholders of rightful gain, or deceive any person, shall be liable to imprisonment for a term of five to ten years and a fine five hundred thousand Baht to one million Baht:

- (1) damages, destroys, alters, deletes or forges account, documents or securities belonging to or concerning the financial institution;
- (2) maliciously entries or fails to entry matters of importance in the account or document belonging to or concerning the financial institution; or
- (3) keeps book of account which are incomplete, incorrect or not up-to-date or contrary to true facts.

Section 147 For the offense under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145 or Section 146, if the offender is an officer of a financial institution, he shall be liable to the same penalty as prescribed for such offense.

Section 148 Any auditor, appraiser or specialist who audits the accounts for

the purpose of expressing an opinion on the financial statements not in accordance with the law on auditor or additional stipulations prescribed in the notification of the Bank of Thailand, or makes a false report, or violates or fails to comply with Section 69 or Section 70 or Section 71, or dishonestly appraises value of property, as the case may be, shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding five hundred thousand Baht, or both.

Section 149 Whoever causes a director, a manager or a person with power of management or a specialist of a financial institution to commit an offense provided in Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section 148, whether by employment, making order, threat, hire, or by any other means, shall be liable to the same punishment as provided for such offense.

Section 150 Whoever, by any means whatever, does any act to assist or facilitate a director, a manager, a person with power of management, an auditor or a specialist of a financial institution in committing any offense provided in Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section

148, whether before or at the time of committing the offense shall be liable to the same punishment as provided for such offense unless such person does not know of such assistance or facilitation.

Section 151 The public prosecutor, when instituting criminal prosecution for any offense under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146, or Section 148, Section 149 and Section 150, shall have power to claim the restitution of the property or the value thereof or damages on behalf of the injured person and shall be exempted from the Court's fee.

Section 152 In the case where there is evidence that any person committed an offence under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146, or Section 148, Section 149 and Section 150 and the Bank of Thailand considers that the damage to the public interest may be caused unless an immediate action is taken, the Bank of Thailand shall have the power to order the seizure or attachment of properties of such person, or properties which may legally be deemed to be the properties belonging to such person or the properties which in the circumstance is reasonably believed to belong to such person. The seizure or attachment may not be longer than one hundred and eighty days unless a case has been filed in Court, in which event the order of seizure or attachment shall continue to operate until the Court orders otherwise. Where circumstances render it impossible to file the case in the Court within one hundred and eighty days, the Court having territorial jurisdiction may extend the period of seizure or attachment as requested by the Bank of Thailand.

The Bank of Thailand shall have power to appoint officials of the Bank of Thailand to seize or attach the properties under the first paragraph. The procedures for the seizure or attachment of property and the setting of an amount of money indispensable for living and the family of the person whose properties are seized or attached under the first paragraph shall be in accordance with the rule as prescribed in the notification of the Bank of Thailand.

Whoever destroys, removes, conceals, takes away, loses or renders useless, transfers to other persons, or commits any act causing damage the properties seized or attached under the first paragraph shall be liable to imprisonment for a term not exceeding ten years or a fine not exceeding one million Baht.

Section 153 In the case where there is a reasonable ground for suspecting that the person under Section 152 is about to abscond from the Kingdom, the Criminal Court upon the request of the Bank of Thailand shall have the power to restrain such person from leaving the Kingdom.

In the case of emergency, the Commissioner-General of the Office of the Royal Thai Police upon the request of the Governor of the Bank of Thailand or any person designated by the Governor of the Bank of Thailand shall have power to restrain the person under Section 152 from leaving the Kingdom for a temporary period not more than fifteen days until the Criminal Court shall order otherwise.

Whoever violates the order of the Criminal Court under the first paragraph or the Commissioner-General of the Office of the Royal Thai Police under the second paragraph, or assists such person shall be liable to imprisonment for a term not exceeding ten years and a fine not exceeding one million Baht.

Section 154 Whoever, in the performance of his duty upon the power and duty prescribed under the law or in the performance of assisting those performing their duties upon the power and duty prescribed under the law, having acquired knowledge of the business of a financial institution which, in a normal business, is to be held in confidence, discloses such knowledge to other persons shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

The provision under the first paragraph shall not apply to disclosure under the following circumstances:

- (1) disclosure in the performance of his duty or for the purpose of investigation or trial;
- (2) disclosure of the commission of an offense under this Act;
- (3) disclosure to the auditor of such financial institution or to the domestic and foreign authorities having powers and duties to supervise such financial institution; (4) disclosure of information to facilitate the performance of duty of the domestic and foreign authorities having powers and duties to supervise financial institution or financial business in accordance with the agreements signed by them.
- (5) disclosure for the purpose of rectifying the condition and operation of such financial institution;
- (6) disclosure for the purpose of granting credits of the financial institution; (7) disclosure of confidential information of a customer of the financial institution that had already been disclosed to the public;
- (8) disclosure of confidential information of a customer of the financial institution with the consent of the customer;
- (9) disclosure to companies within the financial business group of such financial institution;
- (10) disclosure for the purposes of compliance with the laws.

Section 155 Whoever, in the performance of the duty of the person with power of management or an officer of a financial institution, has acquired or obtained the confidential information of such financial institution and discloses such confidential information in a manner likely to cause damage to the other persons or the public, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht or both.

The provision under the first paragraph shall not apply to any disclosure as prescribed in the second paragraph of Section 154.

Section 156 For the offense under Section 122, Section 124, Section 125, Section 128, the second paragraph of Section 132 and Section 139, the committee appointed by the Minister shall have power to settle out of court.

The committee appointed by the Minister under the first paragraph shall consist of three members, at least one of whom shall be an investigating officer under the Criminal Procedure Code.

Where a case has been settled by such committee and the alleged offender has paid the fine as fixed within the period of time specified by the committee, the case shall be regarded as terminated under the Criminal Procedure Code.

Transitional Provisions

Section 157 It shall be deemed that a commercial bank, finance company, and credit foncier company already licensed to undertake the commercial banking business, finance business or credit foncier business, as the case may be, prior to the date of this Act coming into force is the financial institution which is licensed to undertake such business under this Act.

Section 158 The Ministerial regulations, notifications of the Ministry of Finance and notification, circulars, orders or stipulations of the Bank of Thailand on commercial banking business, finance business and credit foncier business, which are in effect prior to the date of this Act coming into force shall remain in effect in so far as they do not conflict or not inconsistent with the provisions of this Act until the notifications or orders under this Act are prescribed.

Section 159 Any financial institution granted relaxation to invest, purchase or hold shares in excess of the ratio prescribed under Section 34 prior to the date of this Act coming into force shall be entitled to hold or possess such shares in accordance with the same rule of the relaxation granted, but for the period not exceeding five years from the date of this Act coming into force.

In the case where any financial institution has been granted relaxation for granting credits, investing, undertaking contingent liabilities, or undertaking the credit-like transaction in excess of the ratio prescribed under Section 50 prior to the date of this Act coming into force, such financial institution shall be entitled to grant credits, invest, undertake contingent liabilities or undertake credit-like transaction in accordance with the binding contract until the date of performing such obligation as specified in such contract.

Any financial institution granting credits, investing, undertaking contingent liabilities or undertaking credit-like transaction to any person and his related person, in aggregate, in excess of the ratio as prescribed under Section 50 prior to the date of this Act coming into force, where such granting of credits, investments, contingent liabilities or credit-like transaction does not violate the law on commercial banking or the law on finance business, securities business and credit foncier business enforced during such period, such financial institution shall be prohibited from granting any credits, investing, undertaking contingent liabilities or undertaking credit-like transaction further to such a person or his related person and shall take any action to reduce such credits, investments, contingent liabilities or credit-like transaction to comply with the provisions of Section 49 or Section 50 rapidly, but for the period not exceeding five years from the date of this Act coming into force.

Any financial institution granted a relaxation to hold immovable properties prior to the date of this Act coming into force shall be entitled to hold such immovable properties in accordance with the same rule of the relaxation granted.

Section 160 Any finance company granted a license prior to the date of this Act coming into force shall be entitled to undertake the business as granted.

Section 161 Any company which does not undertake financial business but has been granted the permission prior to the date of this Act coming into force, to hold shares of any financial institution in excess of the ratio prescribed under Section 18 shall be entitled to continue to hold shares of such financial institution and may acquire new shares issued in capital increase in order to maintain the shareholding ratio held prior to the date of this Act coming into force. However, in the case of disposing of such shares, such company shall be entitled to hold shares in excess of the ratio provided in the law not exceeding the amount of the remaining shares.

When the relaxation period under the first paragraph has expired, the company under the first paragraph is prohibited from acquiring additional shares of such financial institution.

Section 162 Whoever holding or possessing shares of any financial institution in excess of the ratio prescribed under Section 18 due to the inclusion of shares held or possessed by its related person prior to the date of this Act coming into force whereby such holding or acquiring does not violate the laws enforced during such period shall be entitled to continue to hold or possess such shares. However, upon the disposition of any share, such person shall be entitled to hold or possess shares in excess of the ratio prescribed not exceeding the amount of the remaining shares. Such person shall take any action regarding shares held or possessed to comply with the provision of Section 18 rapidly but not exceeding five years from the date of this Act coming into force.

Section 163 For the period that the Deposit Protection Agency has not been established, if the missions and powers and duties under any provisions of this Act are prescribed to be in charge of the Deposit Protection Agency, such missions and powers and duties shall be in charge of the Ministry of Finance until the Deposit Protection Agency is established.

Countersigned by
General Surayud Chulanont
Prime Minister

Remark: The rationale for enactment of this Act is that, at present, the supervision and regulation of commercial banking business, finance business and credit foncier business is under the law on commercial banking business and the law on finance business, securities business and credit foncier business, as the case may be, therefore, the supervision and regulation of each type of financial institution are different. However, the form of financial institutions operations should be under the same standard. Furthermore, in the earlier period Thailand was facing severe economic crisis which directly impacted financial institutions and affected the confidence of the public and depositors on the overall financial institution system. Hence, it is deemed appropriate to improve the standard of supervision of financial institution to become more effective as well as to improve the law on commercial banking and the law on finance business, securities business and credit fancier business and to consolidate them into one such that the supervision and monitoring will be of the same standard. The penalty clauses have also been amended to be more suitable to corresponding offenses. This Act is therefore enacted.

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